

1 M. Carpenter
2 UNITED STATES BANKRUPTCY DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 -----X
In re: Case No. 12-12020
5 RESIDENTIAL CAPITAL, LLC, et al., (MG)
Debtors, Jointly Administered

6 -----X
7 RESIDENTIAL CAPITAL, LLC, et al.,
8 Plaintiffs,
9 vs. Adversary Proceeding

10 UMB BANK, N.A., as successor No. 13-01343 (MG)
indenture trustee under that
11 Certain Indenture, dated as of
June 6, 2008; and WELLS FARGO BANK,
12 N.A., Third Priority Collateral
Agent under that Certain Amended
and Restated Third Priority Pledge
and Security Agreement and
13 Irrevocable Proxy, dated as of
December 30, 2009,

14 Defendants.

-----X
15 (CAPTION CONTINUED ON NEXT PAGE)
16
17

18 VIDEOTAPED DEPOSITION OF MICHAEL CARPENTER
19 New York, New York
20 Tuesday, November 12, 2013
21
22

23 Reported by:

24 THOMAS A. FERNICOLA, RPR
25 JOB NO. 67416

Yellow Highlighting = JSN Designation

Pink Highlighting = Plaintiff's Counter-Designation

Orange Highlighting = Joint Designation

1 M. Carpenter
2 (Caption Continued as follows:)
-----x
3 OFFICIAL COMMITTEE OF UNSECURED
4 CREDITORS, on behalf of the
5 estates of the Debtors,
6 Plaintiff, Adversary Proceeding
7 vs. No. 13-01277 (MG)
8 UMB BANK, N.A., as successor
9 Indenture Trustee under that
10 Certain Indenture, dated as of
11 June 6, 2008; and WELLS FARGO BANK,
12 N.A., Third Priority Collateral
13 Agent and Collateral Control Agent
14 under that Certain Amended
15 and Restated Third Priority Pledge
16 and Security Agreement and
17 Irrevocable Proxy, dated as of
18 December 30, 2009,
19 Defendants.
20 -----x

21 November 12, 2013
22 2:14 p.m.

23 Videotaped Deposition of MICHAEL
24 CARPENTER, held at the law offices of
25 Kirkland & Ellis, LLP, 601 Lexington Avenue, New
York, New York, before Thomas A. Fernicola, a
Registered Professional Reporter and Notary
Public of the State of New York.

1 M. Carpenter

2 A P P E A R A N C E S:

3
4 KIRKLAND & ELLIS

5 Attorneys for Ally

6 655 Fifteenth Street, N.W.

7 Washington, D.C. 20005

8 BY: DANIEL DONOVAN, ESQ.

9 - and -

10
11 KIRKLAND & ELLIS

12 300 North LaSalle

13 Chicago, Illinois 60654

14 BY: RAY SCHROCK, ESQ

15 .
16
17 ALSTON & BIRD

18 Attorneys for Wells Fargo Bank, N.A.

19 as Trustee

20 90 Park Avenue

21 New York, New York 10016

22 BY: WILLIAM HAO, ESQ.

23 (Telephonically)

1 M. Carpenter

2 A P P E A R A N C E S (Continued):

3
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5 Attorneys for Debtors

6 1290 Avenue of the Americas

7 New York, New York 10104

8 BY: KAYVAN SADEGHI, ESQ.

9
10
11 MILBANK TWEED HADLEY & MCCLOY

12 Attorneys for the Ad Hoc Group of

13 Junior Secured Noteholders

14 1 Chase Manhattan Plaza

15 New York, New York 10005

16 BY: ATARA MILLER, ESQ.

17 ATESSH CHANDA, ESQ.

18
19
20 KELLEY DRYE & WARREN

21 Attorneys for UMB Bank

22 101 Park Avenue

23 New York, New York 10178

24 BY: TIMOTHY MARTIN, ESQ.

25 (Telephonically)

1 M. Carpenter

2 A P P E A R A N C E S (Continued):

3
4 REED SMITH

5 Attorneys for Wells Fargo

6 Reed Smith Centre

7 225 Fifth Avenue

8 Pittsburgh, Pennsylvania 15222

9 BY: ZACHARY GELACEK, ESQ.

10 (Telephonically)

11
12
13 CADWALADER WICKERSHAM & TAFT

14 Attorneys for MBIA

15 One World Financial Center

16 New York, New York 10281

17 BY: JASON JURGENS, ESQ.

18
19
20
21
22 ALSO PRESENT:

23 CARLOS LOPEZ, Videographer.

1 M. Carpenter

2 THE VIDEOGRAPHER: This is the start
3 of tape labeled No. 1 of the deposition of
4 Michael Carpenter in the matter, In Re:
5 Residential Capital, LLC.

6 This deposition is being held at 601
7 Lexington Avenue, New York, New York, on
8 November 12, 2013 at approximately
9 2:14 p.m.

10 My name is Carlos Lopez. I am the
11 legal video specialist from TSG Reporting,
12 Inc.

13 The court reporter is Tom Fernicola,
14 in association with TSG Reporting.

15 Appearances are noted.

16 Will the court reporter please swear
17 in the witness.

18
19 M I C H A E L C A R P E N T E R,
20 called as a witness, having been duly sworn
21 by a Notary Public, was examined and
22 testified as follows:

23 BY THE REPORTER:

24 Q. Please state your full name and
25 address for the record.

1 M. Carpenter

2 A. Michael Alan Carpenter,
3 C-A-R-P-E-N-T-E-R. Alan is one L. 134 Otter,
4 O-T-T-E-R, Rock, R-O-C-K, Drive, Greenwich,
5 Connecticut 06830.

6
7 EXAMINATION BY MS. MILLER:

8 Q. Good afternoon, Mr. Carpenter. My
9 name is Atara Miller, and I'm at Milbank Tweed
10 Hadley & McCloy, and we represent the Junior
11 Secured Noteholders in this action. I'm going
12 to go over a couple of the basic ground rules
13 for this afternoon.

14 The first is I'm going to ask
15 questions, you'll give me answers, and it
16 would help the court reporter if you wait for
17 me to finish asking a question before you give
18 a response, and I'll try to do the same.

19 I also got a special request from
20 the court reporter for you to give clear and
21 audible answers so he can take it down. The
22 setup is a little bit difficult for him.

23 There may be times throughout the
24 afternoon where your counsel may object to a
25 question that I ask. I'm going to ask that

1 M. Carpenter

2 you still answer the question unless your
3 counsel instructs you specifically not to
4 answer the question. If at any time a
5 question that I ask you is unclear or you need
6 clarification, just ask.

7 Okay?

8 A. Understood.

9 Q. Also, if you could give audible
10 answers instead of nods of the heads or other
11 nonverbal gestures or acknowledgments, that
12 would be good.

13 Okay?

14 A. Yes.

15 Q. Also, if you need a break, just let
16 me know; but if there's a question pending,
17 I'm going to ask that you answer the question
18 that I've asked before we take a break.

19 A. Sure.

20 Q. Mr. Carpenter, could you tell me
21 what your current position is?

22 A. I'm the Chief Executive Officer of
23 Ally Financial.

24 Q. And when did you assume that
25 position?

1 M. Carpenter

2 A. The middle of November 2009.

3 Q. And when did you first start working
4 for Ally?

5 A. I joined the board of directors in
6 May 2009.

7 Q. And what was your employment before
8 you joined Ally?

9 A. Immediately prior to that I had my
10 own firm called Southgate Holdings. Previous
11 to that I was -- '06 to '09.

12 And then from '95 to 2006, I had
13 various jobs at Travelers, which subsequently
14 merged into Citi, with Citibank to form
15 Citigroup, and I had a variety of senior
16 management responsibilities in both of those.

17 I was at GE for 10 years prior to
18 that, and I was in the Boston Consulting Group
19 for nine years prior to that.

20 Q. And are you currently a member of
21 the board of Ally Financial?

22 A. Yes.

23 Q. And have you been a member of the
24 board of Ally Financial throughout the period
25 from when you started in May 2009?

1 M. Carpenter

2 A. Yes.

3 Q. Mr. Carpenter, I'd like to show you
4 a document that was previously marked as Marx
5 Exhibit 1, which is the ad hoc group of Junior
6 Secured Noteholders Notice of Subpoena to Ally
7 Financial, Inc. And if you look at page 7 of
8 the document, there are a number of deposition
9 topics listed.

10 Do you understand that you've been
11 identified as the 30(b)(6) corporate
12 representative on behalf of AFI with respect
13 to deposition Topics 2, 3 and 4 listed on
14 page 7?

15 A. Yes.

16 Q. And what did you do to prepare for
17 your deposition today?

18 A. I reviewed with counsel a number of
19 documents on various topics.

20 Q. And did any of the documents you
21 reviewed with counsel refresh your
22 recollection in any way?

23 A. Yes.

24 Q. And which documents did you review
25 that refreshed your recollection?

1 M. Carpenter

2 A. I don't remember which documents. I
3 looked at 20 or 30 documents which
4 collectively refreshed my recollection, which
5 was pretty good anyway.

6 Q. And do you recall which topics the
7 documents you looked at refreshed your
8 recollection about?

9 A. I think some of the details of the
10 events that occurred and the dates that
11 occurred and some of the public statements
12 that we made would be the things that would
13 come to mind.

14 THE WITNESS: Am I speaking clearly
15 enough for you?

16 THE COURT REPORTER: Yes, thank you.

17 BY MS. MILLER:

18 Q. And did you review internal e-mails?

19 A. I don't recall seeing any internal
20 e-mails.

21 Q. Did you review public filings by
22 Ally Financial?

23 A. Yes.

24 Q. And did you review any PowerPoint
25 presentations that were made to the board of

1 M. Carpenter

2 directors of Ally Financial?

3 A. I don't believe I did, no.

4 Q. Did you review any other board
5 materials that were submitted to the Ally
6 Financial board?

7 MR. DONOVAN: Other than the SEC
8 filings he talks about?

9 MS. MILLER: Right, yes.

10 A. Not that I recall.

11 Q. How long did you meet with counsel?

12 A. A couple of hours.

13 Q. And, Mr. Carpenter, do you believe
14 that you're the person most knowledgeable at
15 Ally Financial, Inc. and are competent to
16 testify about the matters identified in
17 Topics 2, 3 and 4, specifically the analysis
18 of claims settled as part of the Ally
19 settlement, all matters concerning the
20 analysis of, including the decision to enter
21 into the Ally settlement, and all matters
22 concerning any analysis of alternatives to the
23 Ally settlement?

24 A. I believe I am, yes.

25 MR. DONOVAN: Mark objection to

1 M. Carpenter

2 form.

3 BY MS. MILLER:

4 Q. Mr. Carpenter, do you anticipate
5 submitting direct testimony in this case?

6 A. Yes.

7 Q. On what topics do you expect to
8 cover in your direct testimony?

9 MR. DONOVAN: And before you go,
10 Mr. Carpenter, I'm going to let him answer
11 this but, obviously, it's not done yet or
12 submitted; so, I just want to make sure he
13 can answer what he believes it's going to
14 be, based on his work to date.

15 A. Among other topics, it will address
16 the magnitude of the support that Ally
17 provided to ResCap prior to its filing for
18 bankruptcy. It will address the tremendous
19 support that Ally provided to ResCap during
20 the bankruptcy process which allowed the
21 estate to be able to sell the assets for
22 \$4-1/2 billion, and without that help that
23 would not have been possible.

24 We -- I also talk about the
25 settlement that we reached with the board of

1 M. Carpenter

2 directors and the company prior to or around
3 the time of its filing. I address
4 specifically in several cases the fact that we
5 would not have entered into any settlement
6 whatsoever if it were not for complete and
7 total releases from the estate and from all
8 third parties.

9 And that I would like to underline
10 that point. I addressed the mediation process
11 that led to Ally increasing the amount of cash
12 that it put on the table as part of the
13 overall settlement and how we got to that.
14 And that Ally's expectations with regard to
15 the future are, obviously, if the plan is
16 confirmed, we'll be happy to write the check,
17 and if the plan is not confirmed, that, in
18 particular, the third-party releases are not
19 granted, then we will withdraw our \$2.1
20 billion support.

21 I'm sure there are other things, but
22 those are the ones that come to mind.

23 Q. And do you know that those direct
24 witness statements are being submitted today?

25 A. Yes. Well, I don't know --

1 M. Carpenter

2 MR. DONOVAN: It probably all
3 depends on how long you keep us here today
4 when it will be filed tonight.

5 MS. MILLER: I guess so. I think
6 there's a deadline, but...

7 BY MS. MILLER:

8 Q. You understand that the deadline for
9 submitting witness statements is
10 November 13th?

11 A. I'm sure my counsel understands
12 that. I don't.

13 Q. What about the mediation process do
14 you intend to testify about?

15 A. Well, as I understand it, the
16 mediation process itself is privileged; and,
17 so, therefore, I'm unable to discuss the
18 details of the process itself, simply to say
19 that we entered into a process that, as you
20 know, was supervised by Judge Peck.

21 We entered into an arm's length
22 negotiation. We listened to his advice and we
23 ended up at a much higher number than I
24 thought was -- would ever be possible and
25 certainly way beyond what I ever thought was

1 M. Carpenter

2 justified.

3 But in terms of the mechanics of
4 what took place in that room, that I'm not
5 prepared to discuss, unless counsel tells me
6 otherwise.

7 MR. DONOVAN: No. That's right.

8 BY MS. MILLER:

9 Q. Mr. Carpenter, have you ever
10 characterized the \$2.1 billion settlement
11 payment as a hostage payment?

12 A. I don't know that I characterized it
13 as hostage payment, but I certainly have used
14 language like that in different situations.

15 Q. And what language have you used?

16 A. I may have used the term "hostage
17 payment." Certainly when I talk to the
18 analytical community, I have used terminology
19 like that. Whether I used it in the context
20 of that payment, I'm not going to say because
21 I don't remember.

22 But let me simply say that my view
23 of the merits of the case against us and, in
24 particular, as it related to veil piercing and
25 as it related to fraudulent conveyance, was

1 M. Carpenter

2 that there was absolutely no merit whatsoever.

3 And I would say there's nothing --
4 nothing has transpired, including the
5 examiner's report, that would cause me to have
6 a different view of that conclusion; that as
7 of today, I don't think the accusations
8 leveled against us had any merit whatsoever.

9 And, therefore, the characterization
10 of hostage payment, which I may or may not
11 have made, would not be inaccurate.

12 Q. And what does "hostage payment" mean
13 to you?

14 A. What it means to me is simply
15 writing a check that is not in proportion to
16 the merits. Now, we did it voluntarily and we
17 did it for sound business reasons.

18 Q. Mr. Carpenter, will you be available
19 to testify live at trial?

20 A. Yes.

21 Q. Were you interviewed by the examiner
22 in connection with your role at Ally?

23 A. Not by the examiner personally. I
24 was interviewed by the law firm that was
25 representing the examiner.

1 M. Carpenter

2 Q. And was that Chadbourne & Parke?

3 A. I believe it was.

4 Q. And how many days were you
5 interviewed for?

6 A. It was a matter of, I think about
7 three hours.

8 Q. And was your testimony recorded?

9 A. I don't recall.

10 Q. Did you review the examiner report?

11 A. Yes.

12 Let me be more accurate.

13 Q. Okay.

14 A. If I told you --

15 Q. I was going to be amazed.

16 A. If I had told you I read that many
17 pages, you would wonder if I was being
18 truthful.

19 I read the executive summary of the
20 examiner's report.

21 Q. And beyond reading the executive
22 summary, were there any specific sections that
23 you read more in depth?

24 A. I didn't read any of the sections.

25 Q. Did you do a word search for your

1 M. Carpenter

2 name?

3 A. No, I did not.

4 Q. Did anyone point out to you where
5 you were referenced and discussed in the
6 examiner's report?

7 A. I don't believe they did, no.

8 Q. And was there anything in the
9 executive summary of the examiner report that
10 surprised you when you read it?

11 MR. DONOVAN: And, Mr. Carpenter,
12 before you expand on the area, obviously,
13 you get legal advice, you shouldn't
14 disclose any legal advice or discussion
15 you had. To the extent you had
16 discussions with nonlawyers or your own
17 review it, that's fine, you can testify
18 about that.

19 BY MS. MILLER:

20 Q. I'd say -- so let me restate my
21 question because I didn't read that into it,
22 so let me just be clear.

23 Is that anything that when you were
24 reading the examiner report surprised you?

25 MR. DONOVAN: Same instruction.

Plaintiff's
Objection
19:20-21:18
Irrelevant (FRE
401, 402)

Plaintiff's
Objection
19:20-21:7
Inadmissible
hearsay (FRE
802)

1 M. Carpenter

2 A. Fine.

3 I was not surprised by the complete
4 vindication on piercing of the veil and
5 fraudulent conveyance. I was quite surprised
6 at some of the other things that were
7 mentioned and quantified in the report, which,
8 in my own judgment, have no merit whatsoever.

9 Q. And what were those other things
10 that were mentioned and quantified in the
11 report that you believe have no merit?

12 A. I don't remember the details of it
13 because I haven't looked at it in a long time.

14 There was some crazy notion about
15 taxes which made absolutely no sense to me
16 whatsoever. There was some other crazy notion
17 associated with Minnesota which made no sense
18 to me whatsoever. And big numbers were
19 attached to these things.

20 The only thing in there that I
21 thought you could at least have a debate on
22 was the transfer pricing associated with
23 mortgages from the bank to ResCap, and did the
24 bank take more of a markup than it should
25 have.

1 M. Carpenter

2 Now I personally don't think they
3 did and we certainly had an accounting firm
4 take a look at it. But it was the only thing
5 that I thought you could even have an
6 intelligent conversation around it. The rest
7 of it, frankly, I thought was garbage.

8 Q. And when you're talking about the
9 debate about the transfer pricing and the
10 associated with mortgages from the bank to
11 ResCap and whether the bank took more of a
12 markup than it should, are you referring to
13 the discussion about the brokering agreement
14 and the MMLPSA?

15 A. Yes. What I would refer to as the
16 Glassner question. I'm not sure exactly which
17 agreements, but that was a very small number
18 in the scheme of things.

19 Q. Mr. Carpenter, do you believe that
20 there were any other claims for which Ally is
21 being released that had merit?

22 A. No. I mean, remember, I haven't
23 looked at the document in many months at this
24 point; but my recollection of looking at that
25 document was that there were none of those

1 M. Carpenter

2 complaints that had any logic to them
3 whatsoever, or any merit.

4 Q. I'm going to ask you to put the
5 examiner to the side of your mind right now --

6 A. Uh-huh.

7 Q. -- and I'm asking generally whether
8 there were any claims for which Ally is being
9 released as part of the global settlement that
10 you believe have merit?

11 MR. DONOVAN: And, again,
12 Mr. Carpenter, again, this is a very broad
13 question. So I think it's really just
14 your general reaction, because it can't
15 be -- you're not asking I know for legal
16 advice or counsel of that sort.

17 MS. MILLER: No.

18 A. To be honest with you, I don't
19 really know how to answer that question. I
20 mean, the only thing I can tell you is that I
21 did not believe that any of the things that
22 were mentioned in the examiner's report --
23 many of the things that came out of the
24 examiner's report I'd never heard of before.
25 They were completely out of the blue.

1 M. Carpenter

2 Obviously, I made the point of
3 trying to understand them to form a judgment
4 as to their merits. I concluded, based on
5 professional work with my staff, that, in
6 fact, these new-found theories had no merit
7 whatsoever. And so, I can only really react
8 to the things that are contained in the
9 examiner's report.

10 Q. Mr. Carpenter, would Ally be willing
11 to go forward with the global settlement if it
12 included a carve-out for the claims related to
13 the Glassner issue, as you characterized it?

14 A. No. Absolutely not.

15 Let me say something very, very
16 simple. All right.

17 The very first negotiation with the
18 debtors, with the board of directors at
19 ResCap, the very first conversation, the whole
20 premise was complete and total releases;
21 otherwise, there was no deal.

22 And when we went into the mediation,
23 we made it clear, complete and total releases,
24 otherwise, there was no deal. And as of
25 today, complete and total releases, otherwise,

1 M. Carpenter

2 there was no deal.

3 And if I go back in history, when I
4 first met Mr. Buffett and Mr. Buffett proposed
5 he was one of the person you're representing,
6 when proposed buying ResCap for pennies on the
7 dollar, I said we could have a conversation
8 provided we are completely released from all
9 of these kinds of obligations.

10 And they made a series of proposals,
11 none of which came to pass because they were
12 unable to cross or unwilling to cross that
13 bridge. So, for two years now, the answer is
14 no deal without complete releases, and that is
15 where we are right now.

16 And, by the way, I would say the
17 examiner's report, if this whole deal falls
18 apart, I have a lot more confidence with the
19 examiner's report on where it will end up than
20 I did before the report came out.

21 Q. Because of the examiner report --
22 sorry, because of the examiner's treatment of
23 the veil piercing and fraudulently conveyance
24 action?

25 A. Because those really are the two key

1 M. Carpenter

2 issues. Everything else is garbage.

3 Technical term.

4 MR. DONOVAN: That was legal advice;
5 correct?

6 BY MS. MILLER:

7 Q. So I take it, then, that Ally would
8 not be willing to go forward with the global
9 settlement if there was a carve-out for claims
10 related to breach of the tax allocation
11 agreement; right?

12 A. We are not willing to go forward
13 with any carve-outs for anything. This deal
14 has been negotiated with Judge Peck as the
15 mediator. There is no more room for
16 negotiation from start, end of story.

17 Q. Do you think it was important to
18 have the settlement finalized before the
19 examiner's report was made public?

20 MR. DONOVAN: Objection to form.

21 Again, Mr. Carpenter, you can give
22 your own personal reactions, but any legal
23 advice should not be disclosed.

24 A. I don't know the answer to that, to
25 be honest. I mean, I -- I would say -- I

1 M. Carpenter

2 would say to you this.

3 I would say to you the cost of
4 putting this behind us became so high that
5 I was very much considering whether just to
6 kick the can down the road and see what
7 happened with the report.

8 And if I look in the rear-view
9 mirror, I almost wish I had.

10 Q. Mr. Carpenter, do you believe that
11 there was merit to third-party claims that
12 could be asserted against Ally?

13 A. I have no idea, I mean -- you'd have
14 to define your terms. I don't know what that
15 means. Okay.

16 Q. Did you think that Ally had material
17 exposure on rep and warranty claims?

18 MR. DONOVAN: To the extent your
19 knowledge comes from legal advice either
20 way, you should not disclose that.

21 And your question is seeking legal
22 advice.

23 BY MS. MILLER:

24 Q. When you were negotiating the global
25 settlement, did you consider a value that

1 M. Carpenter

2 third-party claims against Ally might have?

3 A. You mean a numerical value?

4 Q. Numerical value.

5 A. No.

6 Q. What analysis did you do of
7 potential claims that could be asserted by
8 ResCap against Ally?

9 MR. DONOVAN: Again, you can answer
10 from the business perspective, but don't
11 disclose any legal advice.

12 Can you reask your question? I just
13 think it's getting into -- that kind of
14 question is pretty in the sweet spot of
15 legal advice.

16 MR. JURGENS: Well, I'm asking
17 Mr. Carpenter what analysis he did of
18 potential claims that could be asserted by
19 ResCap against Ally.

20 A. The answer is I commissioned
21 extensive legal analysis of all the claims
22 that could be asserted against Ally by ResCap
23 well in advance of ResCap's decision to file
24 for bankruptcy.

25 Q. And did your counsel present you

1 M. Carpenter

2 with a complete -- sorry, strike that.

3 Did you ask any business people
4 within Ally Financial to do an analysis of
5 potential litigation risk exposure?

6 A. No.

7 MR. DONOVAN: And, again -- that's
8 fine.

9 A. This was -- this was all done by
10 outside counsel.

11 Q. Okay.

12 And what did you do to assess
13 potential claims that third parties could
14 assert against Ally?

15 A. Again, we commissioned a major and
16 very thorough review by outside counsel of
17 every conceivable exposure that we could have
18 that would be derived from the actions of
19 ResCap over many previous years.

20 And to give you a specific, let's
21 take rep and warrant. Okay. It is very, very
22 clear that the rep and warrant exposure is
23 ResCap's. It is contractually ResCap's
24 obligation; but, nevertheless, it's entirely
25 appropriate for me, as the chief executive, to

1 M. Carpenter

2 ask the question, even though that is ResCap's
3 obligation clearly by contract and their
4 contract is with the investors, their contract
5 is with the GSCs, is there any way that the
6 parent would have liability for that exposure
7 of ResCap's.

8 It's a completely legitimate
9 question for me to ask and bears directly on
10 the issue of piercing of the corporate veil
11 that we talked about before, that I was
12 pleased that the examiner found was not the
13 case.

14 So I'll give you that as an example.

15 MS. MILLER: I'd like to mark as
16 Carpenter Exhibit 1 a document Bates
17 stamped Ally_0255144 through 162.

18 (A Discussion was Held off the
19 Record.)

20 (Carpenter's Exhibit 1, Transcript
21 of Conference Call dated November 2,
22 2011, Bates Nos. Ally_0255144 through
23 162, was marked for identification.)

24 BY MS. MILLER:

25 Q. Mr. Carpenter, I've marked as

1 M. Carpenter

2 Carpenter Exhibit 1 a final transcript from
3 Thomson StreetEvents of a conference call, the
4 Q3 2011 Ally Financial, Inc. earnings
5 conference call from November 2nd, 2011 at
6 1:00 p.m.

7 Do you see that?

8 A. Sure.

9 Q. This is a document you've seen
10 before?

11 A. I haven't seen this document before,
12 no; but we do take transcripts of our calls.

13 Q. Mr. Carpenter, when did you first
14 start considering a global settlement with
15 ResCap?

16 MR. DONOVAN: Objection to the form.
17 You can answer.

18 A. I don't know what that means.

19 Q. When did you first start settlement
20 discussions with ResCap that would have
21 included a broad release of all debtor and
22 third-party claims?

23 A. Some time in the time frame when
24 ResCap's board of directors was considering
25 filing for bankruptcy.

1 M. Carpenter

2 Q. Do you recall approximately when
3 that was?

4 A. That would be some time
5 presumably -- well, I don't, you know, I
6 didn't go to the ResCap board meetings, so I
7 don't know exactly when. But I would have
8 guessed it would have been in the early part
9 of 2012. That would have been my guess.

10 Q. And by "early," is January probably
11 a safe assumption?

12 A. I don't know. Early to me is
13 anytime between January and April.

14 Q. Okay.

15 Well, I'll show you documents that
16 can hopefully --

17 A. Sure.

18 Q. -- orient us in time.

19 Mr. Carpenter, if you would turn to
20 the page in Carpenter Exhibit 1 with the Bates
21 ending in 151.

22 A. Yes.

23 Q. Do you see there's a section that
24 begins toward the top of the page that says,
25 "Michael Carpenter, Ally Financial, Inc.'s

1 M. Carpenter

2 CEO," and then there's a lot of writing.

3 Do you have an understanding of what
4 this is?

5 A. Yes. This is the -- without reading
6 the whole document, I'm presuming this is a
7 transcript of our earnings call.

8 Q. And is it correct that the comments
9 under the heading, "Michael Carpenter, Ally
10 Financial, Inc.'s CEO," are comments that you
11 made on the earnings call?

12 A. Well, I haven't read them, okay, so
13 I would like -- what I will, first of all, say
14 is my experience in reading these things is
15 they frequently make a lot of mistakes.

16 Q. Okay.

17 A. So, I mean, I'm happy to read it and
18 then comment on anything in particular.

19 Q. Okay.

20 A. But I just caveat that they make a
21 lot of mistakes.

22 Q. Okay.

23 So I'm going to ask you to read
24 those portions of this transcript that you
25 believe are comments that you made or that are

1 M. Carpenter

2 identified as comments that you made.

3 MR. DONOVAN: So you want him to
4 read both pages, it appears, 151 and 152?

5 MS. MILLER: If he feels like he
6 needs to review all of the comments he
7 made to tell me if he thinks it's accurate
8 or not, I'd like him to review all the
9 comments that are identified as comments
10 made by Michael Carpenter on the
11 transcript.

12 A. (Document Review.)

13 Fine. Yes, okay.

14 Q. Mr. Carpenter, is it your
15 understanding that the text under the heading,
16 "Michael Carpenter, Ally Financial, Inc.'s
17 CEO," are comments that you made during the
18 investor -- during the November 2nd, 2011
19 investor call?

20 A. Generally speaking, yes. Not
21 necessarily word for word, but generally
22 speaking, yes.

23 Q. Okay.

24 And looking on the page with the
25 Bates ending 151, starting about six

Plaintiff's
Objection
33:14-22
Inadmissible
hearsay (FRE
802)

1 M. Carpenter

2 paragraphs up from the bottom, there's a
3 discussion about the AG, claims that could be
4 brought by the AG and settlement with the AGs.

5 And you said at the very end in the
6 last sentence of paragraph -- of the fifth
7 paragraph from the bottom, "We see our
8 exposure as a small fraction of that number,
9 referring to the applied market share
10 settlement number that had been bandied about
11 adjusted for Ally's applied market share in
12 the area of 1 billion to 1.5 billion" -- and,
13 sorry, let me restate that.

14 A. Go ahead.

15 Q. Do you see that in discussing the
16 potential settlement with the AG, you indicate
17 that numbers have been thrown around in the
18 marketplace of a \$5 billion number which,
19 based on Ally's market share, would have been
20 a settlement in the area of 1 to \$1.5 billion?

21 A. Yes.

22 MR. DONOVAN: Objection to form.

23 BY MS. MILLER:

24 Q. And it was your position on the call
25 that Ally's exposure was a small fraction of

1 M. Carpenter

2 that number and that Ally simply would not
3 settle for those kind of numbers; right?

4 A. You realize this is about
5 robo-signing. It has nothing to do with this
6 case at all; right?

7 Q. I understand.

8 A. Okay.

9 Q. And in the next paragraph you have a
10 discussion of securities law claims. And,
11 again, with respect to those you say that
12 you're confident in the legal defenses related
13 to the claims.

14 And then you say with respect to the
15 FHFA claims, you see them as being tactical
16 and completely without merit?

17 A. Yes.

18 Q. And on rep and warranty claims in
19 the last paragraph on that page, and carrying
20 over to the top of the page ending in 152, you
21 say that "ResCap currently has 825 --
22 29 million of reference for rep and warranties
23 and we believe that's adequate based on the
24 claims and issues."

25 Do you see that?

1 M. Carpenter

2 A. Yes.

3 Q. And then seven paragraphs down,
4 right in the middle of the page, you say,
5 "Finally, to be clear," and then you stress,
6 "and this is very important, all of these
7 contingent exposures we have been discussing
8 would, if they emerge, be obligations of
9 ResCap and its entity, which include GMAC
10 Mortgage."

Plaintiff's
Objection
36:3-37:12
Inadmissible
hearsay (FRE 802)

11 Then you state, "While Ally owns
12 100 percent of ResCap, ResCap has operated as
13 a clearly separate legal entity."

14 Do you see that?

15 A. Yes.

16 Q. And why was that important to say on
17 this call?

18 A. I think it, you know, it bears
19 directly on the findings of the examiner's
20 report, which is we essentially said that we
21 ran ResCap very much as a separate company.
22 It had its own board of directors, it had an
23 operating agreement, filed its own S1 with the
24 SEC, entered into its own contracts without
25 the endorsement of the parent.

1 M. Carpenter

2 And all of those things were
3 evidence that the obligations of ResCap were
4 not the obligations of the parent, as borne
5 out by the examiner's report.

6 Q. And so you were saying that --

7 A. That's all I was saying there.

8 Q. So you were saying that Ally's
9 exposure on these potential claims didn't
10 exist because the claims were being asserted
11 against ResCap, which is a separate legal
12 entity; is that right?

13 MR. DONOVAN: Objection to the form.

14 You can answer.

15 A. I was simply saying that these,
16 whatever the merits of these claims, and we
17 thought many of them were weak, that those
18 claims would be against ResCap, the legal
19 entity, and did not necessarily transfer, did
20 not, in our view at all, transfer to being
21 obligations of the parent.

Plaintiff's
Objection
37:15-21
Inadmissible
hearsay (FRE
802)

22 Q. Were there any third-party claims
23 that were being negotiated and settled as part
24 of the global settlement in this case that you
25 believe Ally had direct exposure for?

1 M. Carpenter

2 MR. DONOVAN: Again, Mr. Carpenter,
3 you can answer to the extent it's not
4 legal advice.

5 A. I have no idea how to answer that
6 question. You'd have to give me and list of
7 claims and say what about that one.

8 I can't -- I can't answer these
9 things in sweeping generalities like that.

10 Q. So when you were sitting and
11 negotiating or thinking about what Ally's
12 position --

13 A. What time frame are we -- this is
14 2011.

15 Q. Right.

16 A. Right?

17 What time frame are you on?

18 Q. Let's start with January and
19 February of 2012, when you first start having
20 discussions with ResCap about a settlement
21 that would include a broad release, including
22 a broad third-party release.

23 A. Let's call it -- let's call it the
24 spring of 2012. I don't want to be pinned
25 down to even months, but go ahead, what was

1 M. Carpenter

2 the question?

3 Q. Can we include February in the
4 spring?

5 A. Sure. January, February, March,
6 April.

7 Some of us --

8 Q. The rosier outlook for January and
9 February.

10 A. Let's say the first four months of
11 the year.

12 Q. Okay.

13 So can we call it -- all right. Q1
14 into Q2. Okay.

15 In the January to April 2012 time
16 period when you're negotiating with ResCap,
17 were you considering the value that a third
18 party -- that a release from third-party
19 claims had to Ally in connection with that
20 settlement?

21 A. I think I testified to this already.
22 We simply took the point of view that we're
23 not entering into it. We are not entering
24 into a negotiation unless it is understood by
25 all parties that complete releases from the

1 M. Carpenter

2 debtors, from the estate, and from third
3 parties, was a precondition to any
4 negotiation.

5 And the answer to the ResCap board
6 was, if you don't accept that as a
7 precondition, then there is no negotiation.
8 And then if I complete my logic, if there is
9 no negotiation, there is no support agreement
10 and there's no \$4-1/2 billion from asset
11 sales.

12 So, just to complete the story,
13 without -- without a complete and total
14 understanding on day one that we would get
15 full releases from third party and the estate,
16 then the estate would not have achieved a
17 fraction of \$4-1/2 billion of proceeds from
18 asset sales.

19 It was a precondition,
20 non-negotiable, and never at any time in the
21 process ever reconsidered.

22 Q. How did you --

23 A. I don't know how to be more
24 definitive. We can do this for hours if you
25 want, but that is the simple answer.

1 M. Carpenter

2 Q. Okay.

3 A. All right?

4 Q. How did you decide -- how did Ally
5 decide what amount to put on the table in its
6 negotiation with ResCap in the spring of 2012?

7 A. Well, we started from the point of
8 view that we actually did not have any
9 obligation at all. And we entered into an
10 arm's length negotiation with the independent
11 members of the ResCap board of directors.

12 And the ResCap board of directors
13 with whatever, you know, advice they had, took
14 the position that there needed to be a
15 meaningful financial contribution, in addition
16 to all the support that we were going to
17 provide. All right.

18 We had a very -- we had over a
19 period of several weeks an intensive
20 discussion. We certainly didn't proffer
21 350 -- \$750 million. We weren't even close.
22 And so that was -- it was simply a case of an
23 arm's length negotiation ending up with a
24 result that both sides, probably neither one
25 was happy with, but we could live with.

1 M. Carpenter

2 Q. So was the --

3 A. I should point out something. All
4 right?

5 ResCap already knew that there was
6 no piercing of the veil and there was no
7 fraudulent conveyance. They knew that. They
8 knew that they didn't have much to work with.

9 By the way, I'm speculating. I
10 never asked them. Okay.

11 Q. Did you -- do you know whether
12 ResCap's advisors made presentations to your
13 counsel about claims that they had that could
14 be asserted by ResCap against Ally?

15 MR. DONOVAN: And that's "yes" or
16 "no," Mike. Start there.

17 A. Yes.

18 Q. Okay.

19 And did you see any of the
20 presentation materials?

21 A. Yes. It was a joke.

22 Q. And what makes you say it was a
23 joke?

24 MR. DONOVAN: Again, it's your
25 reaction, Mike, not legal counsel's.

1 M. Carpenter

2 A. Correct. Yes, that's true.

3 MR. DONOVAN: Although I may agree
4 with you.

5 A. It was fantasy. It was in the
6 wildest dreams, what kind of garbage could you
7 conjure up.

8 Q. Would they have been better off
9 sticking to the breach of contract claims?

10 A. What breach of contract claims are
11 you talking about?

12 Q. The Glassner issue that the examiner
13 identified.

14 A. I'm not -- I'm not -- I'm not going
15 to comment on that.

16 Q. So how did you -- strike that.

17 Was the settlement -- were the
18 settlement negotiations, from your
19 perspective, just a question of, you know,
20 seeing how much could be squeezed out of a
21 lemon?

22 MR. DONOVAN: Objection to form and
23 time frame.

24 A. I don't understand that form at all.

25 Who was the lemon?

1 M. Carpenter

2 Q. It would have been you in the
3 analogy. Sorry.

4 MR. DONOVAN: And which time frame?
5 Are you talking about leading up to this
6 \$750 million?

7 MS. MILLER: I'm still focusing on
8 the spring of 2012 negotiation.

9 A. I can't -- I can't speak for what
10 the ResCap board's motivation was. You know,
11 I happen to think they are responsible people
12 and they were trying to come up with something
13 they thought was fair.

14 And, you know, we started out very
15 far apart and we ended up where we ended up.

16 Q. So from your perspective was the
17 \$750 million number just a number for all of
18 the value of the releases in Ally's mind
19 without any consideration of the underlying
20 claims?

21 A. I would describe it this way. I
22 would say the combination of the value that we
23 were providing in the support of the ResCap
24 bankruptcy, which probably is a much bigger
25 number than the 750, okay, plus the 750, was

1 M. Carpenter

2 a -- a value package that we were prepared to
3 pay for peace in the near term.

4 Our expectation of that time is this
5 would all have been over by December 2012.

6 Okay? Our expectation going in, was we would
7 get the full support of the debtor for the --
8 the settlement and a quick proposal of the
9 plan going forward.

10 That didn't happen. So it was -- it
11 was not some mechanical process of valuing X,
12 Y and Z. It was a total package with a set of
13 expectations on both sides, and I would say
14 those expectations were met on the Ally side
15 and were not met on the ResCap side.

16 Q. Moving forward now to the \$2.1
17 billion settlement. I'm going to refer to
18 that as it's been referred to for months in
19 this case as the global settlement.

JSN Objection
45:16-46:5
Irrelevant (FRE
401, 402), lack of
foundation (FRE
602, 901, 903)

20 Will you understand what I'm
21 referring to?

22 A. Uh-huh.

23 Q. Okay.

24 How did you decide on the \$2.1
25 billion value to provide a settlement in the

1 M. Carpenter

2 global settlement?

3 A. I would say I didn't decide on it.

4 It was a result of a very, very, very

5 difficult mediation process.

6 Q. And in the context of the mediation,

7 did you consider the potential claims and the

8 value of the claims that could be asserted

9 against Ally?

10 A. I really don't think that was much

11 of an issue at that point.

12 Let me answer the question a little

13 differently.

14 When that negotiation began, the

15 merits were really not a subject of

16 conversation.

17 Q. And why not?

18 A. Because -- because Judge Peck was

19 focused on trying to get a deal done. And the

20 uncertainty associated with the examiner's

21 report was the leverage that he had to bring

22 both sides to the table. It's as simple as

23 that.

24 Q. Who was holding you hostage?

25 MR. DONOVAN: Objection to form.

1 M. Carpenter

2 A. What do you mean by that?

3 Q. Well, if the global settlement
4 payment is, and you said that you very well
5 may have used the language hostage payment,
6 and I could take out a document showing you
7 that it's attributed to you --

8 A. I actually don't think I said that
9 once we had reached a settlement. But I
10 could -- it doesn't matter. Let's not argue
11 about it. It doesn't matter.

12 MR. DONOVAN: I also think -- I'm
13 just concerned you're getting into the
14 mediation process. If you want to ask him
15 why he entered, that's fine; but to the
16 extent you're asking him why he did
17 certain things from Judge Peck, I'm just
18 getting concerned that we are getting into
19 an area that is confidential precluded by
20 the judge.

21 MS. MILLER: Well, I don't want to
22 know -- I'm sensitive to that.

23 BY MS. MILLER:

24 Q. I'm certainly not asking you about
25 discussions with Judge Peck or otherwise. But

1 M. Carpenter

2 to the extent that you're on the public record
3 characterizing a payment as a hostage payment,
4 I just want to know what your mindset was in
5 saying it and who Ally felt it was being held
6 hostage.

7 MR. DONOVAN: Can we see the
8 document, because I'd like to see the time
9 frame and everything.

10 MS. MILLER: Yes.

11 We'll come back to it after a break.
12 I don't want to take time on the record
13 right now.

14 BY MS. MILLER:

15 Q. Are you okay, you don't need a
16 break?

17 A. Yes, I'm fine.

18 Q. Okay. So let's keep going.

19 Mr. Carpenter, did you insist on the
20 settlement of the intra ResCap debtor,
21 intercompany claims as part of the global
22 settlement?

23 A. I don't even understand the
24 question. I'm sorry.

25 Q. So do you understand that certain

Plaintiff's
Objection
48:25-49:18
Irrelevant (FRE
401, 402), lack of
personal
knowledge (FRE
602)

1 M. Carpenter

2 ResCap debtors, that there are intercompany
3 claims between certain ResCap debtors?

4 A. I do understand that, yes.

5 Q. And was a condition of Ally making a
6 payment under the global settlement, the
7 settlement of all of those intra ResCap
8 intercompany claims?

9 A. I don't -- I wasn't part of that. I
10 mean, I can't imagine how we could write a
11 check unless there was an agreement among the
12 various ResCap entities. I can't imagine how
13 you do that. But I did not lay down that as a
14 condition.

15 Q. So from your perspective, would Ally
16 have been comfortable writing a check and
17 then, you know, letting the kids fight over
18 who gets what?

Plaintiff's
Objection
49:15-18
Objection to
form: vague
and
ambiguous

19 MR. DONOVAN: Objection to form.

20 Can you ask a little --

21 MS. MILLER: Sorry.

22 MR. DONOVAN: I'm just worried --

23 actually, I'm not sure even what we're

24 talking about. I think I know it's a

25 legal dispute. I'm not sure the way you

JSN Objection
49:19-50:4
Irrelevant (FRE
401, 402),
Inadmissible
hearsay (FRE
802)

1 M. Carpenter

2 described it is what Mr. Carpenter is
3 referring to; so, I'm worried that there's
4 some confusion here.

5 MS. MILLER: Okay.

6 MR. DONOVAN: Because he was talking
7 about ResCap entities. You're talking
8 with inter-creditor claims, I believe. So
9 that's why --

10 MS. MILLER: No.

11 MR. DONOVAN: Sorry. If you could
12 just go ahead. I am worried his answer
13 differed from your question.

14 BY MS. MILLER:

15 Q. Okay.

16 You know what I'm talking about, so
17 I'm going to ask a more clear question so we
18 can all be on the same page here.

19 A. Okay.

20 Q. Would Ally have been prepared to
21 write a check to ResCap and then allow ResCap
22 to figure out and the various ResCap
23 subsidiaries fight about where the settlement
24 payment should be allocated?

25 A. Well, it's a very hypothetical

Plaintiff's
Objection
50:20-51:10
Irrelevant
(FRE 401,
402)

1 M. Carpenter

2 question; right? Which, you know, I would,

3 frankly, defer to counsel for an answer on.

4 But I would say -- I would put it in

5 these terms. If we were writing a check and

6 we knew we were getting everything we asked

7 for, including all of the various releases

8 that I just described, how the creditors

9 divide up the spoils is a matter of

10 indifference to me.

11 MS. MILLER: I'd like to mark as
12 Carpenter Exhibit 2 a document Bates
13 stamped Ally_0003585 through 3759.

14 (Carpenter's Exhibit 2, Set of
15 Board Material of GMAC Financial Service,
16 dated June 1, 2009, Bates Nos.
17 Ally_0003585 through 3759, was marked for
18 identification.)

19 BY MS. MILLER:

20 Q. I've marked as Carpenter Exhibit 2 a
21 set of board materials of GMAC Financial
22 Services from the Special Informational GMAC
23 Board of Directors Meeting, dated on Monday,
24 June 1, 2009. And you're listed as -- on the
25 top of the page.

1 M. Carpenter

2 A. Yes.

3 Q. Mr. Carpenter, have you seen these
4 documents before?

5 A. I mean, I'd have to look through the
6 document to answer that, but it's not
7 unfamiliar in terms of the kind of documents
8 that were produced.

9 Q. And is this right around the -- is
10 this document from right around the time that
11 you joined the Ally board?

12 A. Yes.

13 Q. Sorry, just so the record is clear,
14 was Ally Financial at this time known as GMAC
15 Financial Services?

16 A. Yes.

17 Q. So these are board materials
18 relating to what we've been referring to today
19 as the Ally Financial board; right?

20 A. They would appear to be, yes.

21 Q. Okay.

22 Do you know whether this would have
23 been your first board meeting?

24 A. I don't recall. We have 36 board
25 meetings from the time I joined the board

1 M. Carpenter

2 until the time I took over as CEO.

3 So I wouldn't swear that this was
4 the first.

5 Q. I think you got paid for each one;
6 right?

7 A. I actually don't think we did.

8 Q. I think there was a chart somewhere
9 that shows that you did.

10 But, Mr. Carpenter, when you joined
11 the Ally board or -- sorry -- let me restate
12 that.

13 When you -- after you joined the
14 Ally board, did you have an understanding of
15 whether ResCap was insolvent?

16 MR. DONOVAN: Objection to form.

17 A. The board was certainly not informed
18 that ResCap was insolvent. Nobody had
19 suggested that ResCap was insolvent.

20 Q. Do you recall considering filing
21 ResCap for bankruptcy protection at the time
22 that you joined the board?

23 A. What I recall -- the reason we had
24 36 board meetings is because ResCap and the
25 mortgage business, in general, was a huge

1 M. Carpenter

2 problem for the company. It had absorbed a
3 tremendous amount of capital. As you know,
4 the government put \$17 billion into the
5 company. I think pretty much all of that went
6 to support the mortgage business one way or
7 another.

8 The company did not have access to
9 the capital markets because the market wasn't
10 comfortable with a mortgage business; and, so,
11 for that and many other reasons, the board of
12 directors was very, very concerned about what
13 the future strategy should be for the mortgage
14 business and ResCap, in particular.

15 And that was the topic of many of
16 those board meetings. And we did, in fact,
17 hire financial advisors to look at every
18 conceivable alternative, and certainly
19 bankruptcy was one of the alternatives that
20 was evaluated in that time frame.

21 That is not what happened. What
22 happened, when I took over as CEO, is with the
23 help of the U.S. Government, we made a huge
24 multi-billion-dollar infusion into ResCap
25 to -- to allow it to be recapitalized and go

1 M. Carpenter

2 forward. But was it considered as an
3 alternative, yes, it was.

4 Q. And did any of your advisors tell
5 you whether -- sorry, let me make it clear so
6 as not to draw an objection.

7 Did any of your financial advisors
8 tell you whether ResCap was insolvent from a
9 balance sheet perspective?

10 A. No, they did not.

11 Q. And do you know whether ResCap would
12 have been able to pay its obligations as they
13 came due if Ally did not continue to support
14 and make capital infusions into ResCap in
15 2009?

16 MR. DONOVAN: I object to the form.

17 It's a hypothetical.

18 But go ahead.

19 A. I don't remember what the financial
20 projects were back then. I mean, I do
21 remember, as I said, in the -- in December of
22 '09, we wrote down the questionable mortgages
23 in ResCap. We infused ResCap with additional
24 capital to the tune of, I think \$2-1/2
25 billion, something of that order of magnitude.

1 M. Carpenter

2 And we were comfortable when we did
3 that, that the company had the wherewithal
4 based on its business plan to go forward and
5 to thrive.

6 Q. And in 2009, after you joined the
7 board, did you understand that -- or, sorry.

8 Did you consider whether ResCap
9 would be able to continue to pay its
10 obligations as they came due without ResCap --
11 without Ally's support?

12 MR. DONOVAN: Objection. Asked and
13 answered.

14 A. Yes. We were mostly focused on in
15 '09 what are the strategic alternatives for
16 ResCap and what direction do we go.

17 The question, there was no member of
18 management, no member of the board, no
19 member -- no advisor that I remember
20 suggesting solvency issues.

21 Q. And was one of the alternatives that
22 the board considered cutting off further
23 support to ResCap and preparing for a ResCap
24 bankruptcy filing?

25 A. It was one of half a dozen

1 M. Carpenter

2 alternatives that were considered --

3 Q. And on what --

4 A. -- but it was not implemented.

5 Q. Understood.

6 And on what basis would ResCap be
7 filing for bankruptcy?

8 MR. DONOVAN: Again, two things,
9 Mr. Carpenter. At that point you were the
10 board member, but still to the extent the
11 board got legal advice, that shouldn't be
12 disclosed. To the extent --

13 A. The board obviously made a decision
14 to support ResCap, to recapitalize it, and
15 during the time I was on the board we had
16 repeatedly put in cash and we had repeatedly
17 forgiven debt to support ResCap's financial
18 needs.

19 And the actions that were taken in
20 December of '09 were in order of magnitude
21 greater than the actions that had been taken
22 previously. So what alternatives were
23 considered were numerous. We looked at
24 spinoffs, we looked at all kinds of things.

25 But, in the end, the board decided

1 M. Carpenter

2 to support the company and did so in a major,
3 major way.

4 Q. And is it your testimony that you
5 don't know whether ResCap would have been
6 forced into bankruptcy if Ally -- if the Ally
7 board had decided instead not to provide
8 further financial support to ResCap?

9 MR. DONOVAN: Objection to form.

10 A. As I sit here now, I can't answer
11 that question. I don't remember the
12 financials.

13 Q. So you think that it's possible that
14 ResCap could have continued as a going concern
15 even without any financial support from Ally?

16 MR. DONOVAN: Objection to form.

17 A. It's possible, but I simply don't
18 remember the analysis back then. You know, I
19 have to keep saying: We looked at the
20 strategic alternatives. We decided to commit
21 to the business in -- with a huge amount of
22 money. And we did that because the U.S --
23 because we were able to draw \$3-1/2 billion
24 from the U.S. Treasury.

25 It's no more complicated than that.

1 M. Carpenter

2 Q. And you did it --

3 A. Everything else is hypothetical.

4 Q. And you did it because you knew that
5 if Ally didn't support ResCap, ResCap would be
6 forced into bankruptcy?

7 A. Not at all. We did it because we
8 thought that ResCap could -- ResCap and the
9 mortgage business could be a good business,
10 could earn money and could justify the
11 shareholders's investment.

12 It wasn't for negative defensive
13 reasons. We thought that was the best course
14 of action for the shareholders. We were
15 wrong, but that was the decision.

16 Q. Mr. Carpenter, do you understand
17 that ResCap had total net worth covenants that
18 it had to comply with?

19 A. Yes.

20 Q. And --

21 MR. DONOVAN: Can you just give time
22 frames, because it changed over time, just
23 as you go forward, the net worth
24 covenants?

25 MS. MILLER: Okay.

1 M. Carpenter

2 BY MS. MILLER:

3 Q. I'm going to talk about the entire
4 period from 2009 through the bankruptcy
5 filing.

6 Do you understand that ResCap had
7 total net worth covenants that it had to
8 comply with?

9 A. Yes. But it differed at different
10 times, and it was less restrictive as time
11 went on.

12 Q. Okay.

13 And do you understand that the total
14 net worth covenants that ResCap had to comply
15 with throughout this period included total net
16 worth covenants in financial, in third-party
17 financing agreements?

18 MR. DONOVAN: Objection to form.

19 A. I don't recall that as I'm sitting
20 here.

21 Q. Do you recall that ResCap had total
22 net worth covenants in bank lending
23 facilities?

24 A. The constraint that I recall is the
25 one that we had with either Fannie or Freddie.

1 M. Carpenter

2 There may have been others, but that happens
3 to be the one I remember.

4 Q. And if ResCap failed to satisfy the
5 net worth covenant with Fannie or Freddie, do
6 you know what the results would have been?

7 A. No. It would have been -- it would
8 have been complicated because, in the end,
9 Fannie and Freddie have the right to seize
10 from ResCap the mortgage servicing rights,
11 which are a substantial asset on the balance
12 sheet of the company.

13 They have the right to do that.
14 They don't have to prove anything to anybody.
15 They have to -- they have the right to do
16 that. And that, by the way, in the bankruptcy
17 was one of the things that ResCap was most
18 concerned about, which was that that if they
19 did not get the support of Ally to continue to
20 function as a going concern and meet the needs
21 of the GSCs, that \$1.1 billion of MSR value
22 that the investors -- that the creditors
23 benefited from would have not been available
24 because the GSCs could have essentially taken
25 the mortgage servicing rights away.

Plaintiff's
Objection
61:4-62:5
Lack of
personal
knowledge
(FRE 602), lack
of foundation
(FRE 602, 901,
903),
inadmissible lay
opinion

1 M. Carpenter

2 And so that -- whether they would
3 have done in '09, '10, you know, I don't know,
4 but that was always the concern, which was
5 what would the reaction be.

6 Q. And what would the effect have been
7 on the bank if --

8 A. On the bank?

9 Q. Can I just finish my question?

10 A. Yes. Sorry.

11 Q. What would the effect have been on
12 Ally if the GSCs had pulled the servicing
13 rights from ResCap?

14 MR. DONOVAN: And let's be clear.
15 You're talking about the MSRs on ResCap's
16 books, because there are different ones
17 and that is where I think the confusion
18 is.

19 A. You used the term "Ally Bank." You
20 used the term "bank." So we have three
21 entities we're talking about. We're talking
22 about Ally Bank, we're talking about Ally
23 Financial and ResCap.

24 The first and the third have an MSR
25 asset; the second, the parent, does not.

1 M. Carpenter

2 Q. What would -- what would the effect
3 have been on Ally and all of its non-debtor
4 subsidiaries if the GSCs had pulled the
5 mortgage servicing right from ResCap?

6 A. Ally and its non-debtor -- well,
7 what would have happened is ResCap -- I mean,
8 I suppose what would have happened, I'm
9 speculating, all right, so what would have
10 happened is the billion dollars of value that
11 ResCap would have shown on its books would
12 have gone to zero.

13 And in that scenario, I guess ResCap
14 would have been bankrupt. And then the
15 implication on the parent beyond a reduction
16 in ResCap's net worth, nothing directly, but
17 it would, obviously, indirectly it wouldn't
18 have been good.

19 MS. MILLER: I'd like to mark as
20 Carpenter Exhibit 3 a document Bates
21 stamped Ally_0359385.

22 (A Discussion was Held off the
23 Record.)
24
25

1 M. Carpenter

2 (Carpenter's Exhibit 3, E-Mail from
3 Lara Hall to Michael Carpenter dated
4 September 26, 2011, Bates No.
5 Ally_0359385, was marked for
6 identification.)

7 BY MS. MILLER:

8 Q. Mr. Carpenter, I've marked as
9 Carpenter Exhibit 3 a document -- sorry, an
10 e-mail from Lara Hall to you, copying a number
11 of people, dated September 26, 2011, with the
12 subject, "Request for Modification to BOD
13 Resolution Re: ResCap's 9/30 TNW."

14 Do you see that?

15 A. Yes.

16 Q. Is this a document that you
17 received?

18 A. Yes. Okay.

19 Q. Do you have an understanding of what
20 TNW is?

21 A. I think I think they mean Total Net
22 Worth.

23 Q. And in this e-mail is Ms. Hall
24 recommending that Ally move the cap on what it
25 will contribute to ResCap up from \$250 million

1 M. Carpenter

2 to \$1 billion?

3 A. Let me pause for a minute here and
4 say, I don't recall this document. All right?

5 My just reading it, what I believe
6 that it relates to is that we were approaching
7 a settlement or ResCap was approaching a
8 settlement with the Department of Justice and
9 the Attorney General on the robo-signing
10 settlement, which we talked about earlier on.

11 And that it was unclear to us what
12 the amount of money is, or was, but that,
13 given ResCap's at that time net worth of
14 316 million, it was likely that ResCap would
15 fall below its net worth covenants, because
16 the charge from the Department of Justice was
17 going to be in the hundreds of millions of
18 dollars.

19 And so, therefore, ResCap would have
20 fallen below its net worth covenants, and
21 something would have had to be done to fix it.
22 And what I think Lara was trying to do here is
23 to get ahead of it, is to essentially to say
24 rather than find out we have negative net
25 worth and we violated the covenants, let's fix

1 M. Carpenter

2 it ahead of time.

3 I remember the issue. I don't
4 remember what we did about it.

5 Q. And Ms. Hall, in the second
6 paragraph of this e-mail, says that "The
7 primary reason why we recommend this path is
8 because if ResCap were to breach its covenant
9 as of 9/30, even if driven by a subsequent
10 event, it is an immediate event of default
11 with no cure period."

12 A. Right.

13 Q. And then she lists a number of
14 things, including one, the five external bank
15 facilities.

16 Do you see that?

17 A. Yes.

18 Q. Does that refresh your recollection
19 that ResCap had total net worth requirements
20 in its external bank facilities?

21 A. Yes.

22 Q. And the FNMA facility.

23 Do you see that?

24 A. Yes.

25 Q. Do you know what the FNMA --

1 M. Carpenter

2 A. The Fannie Mae.

3 Q. The Fannie Mae?

4 A. Yes.

5 Q. And so we discussed that. And then
6 three with the GSCs, which I guess includes
7 Fannie and Freddie?

8 A. Yes.

9 Q. Do you understand that a breach of
10 the total net worth covenant would result in
11 an immediate event of default with no cure
12 period for ResCap?

Plaintiff's
Objection
67:9-22
Lack of personal
knowledge (FRE
602), lack of
foundation
(FRE 602, 901,
903),
inadmissible lay
opinion

13 A. Well, I didn't know the details of
14 it, but that's what this memo says.

15 Q. Do you have any reason to believe
16 this isn't true?

17 A. No.

18 Q. And then she explains that all of
19 the banking parties will have the ability to
20 accelerate and the GSCs will have the right to
21 pull servicing?

22 A. Correct.

23 Q. And so we discussed the servicing.
24 And what does it mean if the banking party has
25 the ability to accelerate a bank facility?

1 M. Carpenter

2 A. It means they can call the loans
3 and, obviously, if the company doesn't have
4 enough cash on hand to pay the loans, they're
5 in default.

6 Q. And then she says one sentence
7 later, "It is also likely a disclosable event
8 for Ally, given the size of lending facilities
9 and the materiality overall."

Plaintiff's
Objection
68:6-16
Lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602, 901,
903),
inadmissible
lay opinion

10 A. Yes.

11 Q. Is it your understanding that if
12 ResCap had an event of default on its five
13 external bank facilities with Fannie and with
14 Freddie, that ResCap -- that Ally would have
15 to disclose that?

16 A. I wouldn't doubt it.

17 Q. And then it says, "In other words,
18 we could be facing an immediate liquidity
19 event."

20 Do you see that?

21 A. Yes.

22 Q. And do you what -- do you know who
23 the "we" is?

24 MR. DONOVAN: Objection. Calls for
25 speculation.

1 M. Carpenter

2 A. Whereabouts are you?

3 Q. The second to last sentence in the
4 second paragraph. It says, "In other words,
5 we could be facing an immediate liquidity
6 event."

Plaintiff's
Objection
69:3-19
Lack of
personal
knowledge
(FRE 602), lack
of foundation
(FRE 602, 901,
903),
inadmissible lay
opinion

7 A. Well, I think, you know, I could
8 speculate. I think what she's trying to do
9 here is say, Ally has to step up to fix the
10 net worth and liquidity problem that this
11 event creates.

12 And that's what we did.

13 Q. Because it would have bad
14 consequences for Ally?

15 A. Bad consequences for ResCap. It
16 would have put ResCap out of business,
17 immediately.

18 Q. And bad consequences for Ally?

19 A. Oh, absolutely.

20 Q. And in connection with ensuring that
21 ResCap remained in compliance with its total
22 net worth, did Ally occasionally forgive
23 certain intercompany debt?

24 MR. DONOVAN: Objection to form.

25 MS. MILLER: Sorry. Let me restate

1 M. Carpenter

2 that.

3 BY MS. MILLER:

4 Q. Did Ally ever forgive intercompany
5 debt that was owed to it by ResCap in order to
6 ensure that ResCap would remain in compliance
7 with its total net worth covenants?

8 A. It did, in, as I recall, though my
9 memory is not perfect, it did so in 2009. It
10 did not do so until 2011 after that, which I
11 think relates to this.

12 And I don't remember how many other
13 times, not that it was infrequent, let's put
14 it that way, but it did happen.

15 Q. I don't know that that's just a
16 realtime thing, but I just want to make sure
17 that the record in the last question says did
18 Ally ever forgive, as written. It's a real
19 word, but it's makes no sense.

20 What does it mean to forgive a debt?

21 MR. DONOVAN: Objection to form.

22 A. You owe me \$100. I tell you don't
23 need to repay it.

24 Q. And if I never owed you \$100, would
25 you have to forgive my debt?

Plaintiff's
Objection
70:20-25
Irrelevant
(FRE 401,
402), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602,
901, 903),
inadmissible
lay opinion

1 M. Carpenter

2 MR. DONOVAN: Objection to form.

3 He's a fact witness. You can't ask

4 hypotheticals.

5 A. If you didn't borrow \$100 from me, I

6 wouldn't have to -- you wouldn't have to repay

7 me, no.

8 Q. So when the Ally board -- did the

9 Ally board have to approve debt forgiveness?

10 A. Depending on the amount, the answer

11 is yes.

12 Q. Let me clarify that.

13 Did the Ally board have to approve

14 debt forgiveness between -- did the Ally board

15 have to forgive -- I'm going to strike that.

16 Let's take a break because we have

17 two minutes and I'll come back to it and

18 hopefully be able to say a clear question.

19 THE VIDEOGRAPHER: The time is

20 3:36 p.m. We're going off the record.

21 (Recess taken from 3:36 p.m. to

22 3:57 p.m.)

23 THE VIDEOGRAPHER: The time is

24 3:57 p.m. We're back on the record, video

25 No. 2.

Plaintiff's
Objection
71:5-7
Irrelevant
(FRE 401,
402), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602,
901, 903),
inadmissible
lay opinion

1 M. Carpenter

2 BY MS. MILLER:

3 Q. Good afternoon, Mr. Carpenter.

4 MS. MILLER: I'd like to mark as
5 Carpenter Exhibit 4 a document Bates
6 stamped RCUCCJSM10615535 through 5547.

7 (Carpenter's Exhibit 4, Series of
8 E-Mails, Bates Nos. RCUCCJSM10615535
9 through 5547, was marked for
10 identification.)

11 MR. DONOVAN: Just for the record,
12 it appears to be missing a page, at least
13 Bates number wise.

14 MS. MILLER: Right. So I believe
15 what it's missing is the identifier
16 identifying that there's another -- that
17 there's an attachment; but, yes, I see
18 that.

19 BY MS. MILLER:

20 Q. Mr. Carpenter, I've marked as
21 Carpenter Exhibit 4 an e-mail chain, but
22 really I'd like you to focus on -- turn to the
23 document after the blue slip sheet, which is
24 RCUCCJSN10615538, which is titled, a document
25 titled "Unanimous Consent to Action," and it's

1 M. Carpenter

2 dated December 30, 2009.

3 Do you see that?

4 A. Yes.

5 Q. Mr. Carpenter, do you recognize this
6 document?

7 A. No.

8 Q. Looking at the page ending in 15542,
9 do you recognize your signature on that page?

10 A. That's my signature.

11 Q. Do you understand that you signed
12 this document in your capacity as a member of
13 the board of directors?

14 A. Yes.

15 Q. Mr. Carpenter, did the Ally board
16 have to approve debt forgiveness by Ally to
17 ResCap in amounts greater than \$50 million?

18 MR. DONOVAN: Objection to form.

19 Go ahead, Mr. Carpenter.

20 A. They had to approve any capital
21 infusion in excess of 50 million, which I
22 presume would include debt forgiveness.

23 Q. And was the same true with respect
24 to debt forgiveness between ResCap and its
25 subsidiaries?

1 M. Carpenter

2 A. I think debt forgiveness between
3 ResCap and its subsidiaries was -- I don't
4 know the answer to that.

5 I would imagine that it's the
6 purview of the ResCap board, without the
7 approval of the parent board, but I don't know
8 that as a fact.

9 Q. Okay.

10 So looking at the page ending in
11 10615539, the very top "whereas" paragraph.

12 A. Right.

13 Q. It says, "Whereas under the
14 reservation of authorities of the board, the
15 board must approve GMAC's capital contribution
16 to ResCap and ResCap's contribution to RFC, to
17 the extent each contribution is \$50 million or
18 more."

19 A. Yes.

20 Q. I'm going to skip the parenthetical,
21 but do you see that?

22 A. Yes.

23 Q. Do you understand that ResCap's
24 contribution to RFC is relating to a debt
25 forgiveness between ResCap and one of its

1 M. Carpenter

2 subsidiaries?

3 MR. DONOVAN: Objection to form.

4 A. I'm not arguing about it. I just
5 don't remember it. I'm just reading it as if
6 for the first time.

7 Q. Is that your understanding based on
8 reading it?

9 A. It's not something I would have paid
10 any attention to it, frankly.

11 Q. Do you recall whether, as a member
12 of the Ally board, you periodically approved
13 debt forgivenesses between ResCap and certain
14 of its subsidiaries?

15 A. I don't remember that.

16 Q. Looking back at the page with the
17 Bates ending 15538, toward the middle of the
18 page, the second bullet states, reads,
19 "Forgiveness of outstanding indebtedness of
20 ResCap to GMAC under the following agreements,
21 as may be amended from time to time, such that
22 the aggregate amount of the indebtedness
23 forgiven will be deemed paid in full and
24 completely extinguished and ResCap will have
25 no further obligation for the forgiven

1 M. Carpenter

2 indebtedness."

3 And it lists under the third dash,
4 the loan agreement dated November 20, 2009, by
5 and among RFC Asset Holdings II, LLC, and
6 Passive Asset Transactions, LLC.

7 Sorry, my misreading. Strike the
8 question.

9 Mr. Carpenter, when you consider the
10 forgiveness of debt that ResCap owed to Ally,
11 did you consider -- were you considering it
12 from the perspective of -- strike that.

13 I tried to take a break.

14 Mr. Carpenter, if ResCap didn't owe
15 Ally money under an intercompany debt, would
16 Ally have had to forgive that debt?

17 MR. DONOVAN: Objection to form.

18 A. I don't understand the question. If
19 ResCap didn't owe Ally money, then would Ally
20 have not had to forgive the debt?

21 Q. Right.

22 A. I don't understand the question.

23 Q. So let me say it differently.

24 A. Okay.

25 Q. If Ally gave ResCap money as an

1 M. Carpenter

2 equity contribution, and ResCap was not
3 repaying that money, would Ally have had to
4 take any action to forgive an obligation of
5 ResCap's?

6 MR. DONOVAN: Objection to form.

7 Hypothetical.

8 A. I mean, I think the answer is very
9 simple, which is in order to preserve an
10 appropriate capital, you know, an appropriate
11 capital level in ResCap, this is the
12 recapitalization that I was describing at the
13 end of '09, which had a whole series of
14 aspects to it, one of which was writing down a
15 whole bunch of loans in ResCap, contributing
16 loans from Ally Bank as capital.

17 So I would say there are many
18 different ways you can contribute capital.
19 You can contribute equity. You can forgive
20 debt. You can contribute mortgage loans,
21 which we did here to the tune of several
22 billion dollars. All of those things can be
23 used and, you know, I rely on my financial
24 people and my legal people to tell me which is
25 the best solution at this particular point in

1 M. Carpenter

2 time.

3 But, you know, you had half a dozen
4 different things you could do to accomplish
5 the same objective.

6 Q. Did Ally have an expectation that
7 ResCap would repay the debts that it were owed
8 if they hadn't been forgiven?

9 A. Our -- our loans to ResCap were
10 throughout this period heavily secured by
11 assets, and there was every reason to believe
12 there was adequate collateral to repay those
13 loans.

14 Q. You don't recall ever considering
15 and approving debt forgiveness between ResCap
16 and one of its subsidiaries?

17 A. I don't recall that, no; but the
18 phrase you read earlier on suggests that the
19 board did have certain responsibilities in
20 that regard. I just don't recall that as I'm
21 sitting here.

22 Q. Do you know if the Ally board would
23 have had to approve capital contributions that
24 were not in the form of debt forgiveness?

25 A. They would have had to approve any

1 M. Carpenter

2 capital contribution above \$50 million, to the
3 best of my knowledge.

4 Q. Including capital contributions
5 between ResCap and its affiliates?

6 A. I didn't say that. You asked me
7 about from Ally to ResCap, and I answered you
8 on Ally to ResCap.

9 What exactly was required for an
10 inter-subsidiary transaction within ResCap or
11 a transaction between ResCap and its
12 subsidiaries, I don't have the expertise,
13 sitting here now, to comment on.

14 Q. If the issue were presented to the
15 board for approval, do you believe you would
16 have been informed before making a decision on
17 it?

18 MR. DONOVAN: Objection to form.

19 A. I would, obviously, as CEO, have
20 been knowledgeable about all of the elements
21 of a unanimous consent that was presented to
22 the board of directors. But, you know, having
23 said that, I rely on my internal counsel to
24 get this stuff right. I don't know the legal
25 entity structure of the company to that lowly

1 M. Carpenter

2 detail.

3 Q. Mr. Carpenter, when you were
4 negotiating the settlement with ResCap, going
5 back to the spring of 2012, did you consider
6 the tax benefits that Ally would get as a
7 result of any settlement payment made to
8 ResCap?

9 A. I'm not aware there were any tax
10 benefits. And I've heard lots about tax
11 benefits since then, and I haven't found a tax
12 person yet that tells me there is any
13 legitimacy to that argument.

14 Q. So, do --

15 A. There are some creative minds.

16 Q. What do creative minds do?

17 A. What?

18 Q. What have creative minds been doing?

19 A. Imagine tax laws that don't exist.

20 Q. So is it your position that --
21 well -- sorry, strike that.

22 A. Let me be clear. In the \$2.1
23 billion settlement, Ally does not expect to
24 receive any tax benefits.

25 Q. What do you mean by in the \$2.1

1 M. Carpenter

2 billion settlement?

3 A. We don't expect to receive any tax
4 benefits.

5 Q. Does Ally expect to receive tax
6 benefits as a result of ResCap's
7 restructuring -- ResCap's bankruptcy and its
8 contribution of \$2.1 billion to ResCap?

9 A. Not to my knowledge. I've heard the
10 allegation made, but my professionals tell me
11 it's fantasy.

12 Q. I'd like to show you what's been
13 previously marked as Aretakis 9.

14 THE VIDEOGRAPHER: The time is
15 4:12 p.m. We're going off the record.

16 (A Discussion was Held off the
17 Record.)

18 THE VIDEOGRAPHER: The time is
19 4:13 p.m. We're back on the record.

20 BY MS. MILLER:

21 Q. Mr. Carpenter, I've handed you
22 what's been marked as Aretakis Exhibit 9,
23 which is the July 31, 2013 Form 8K of Ally
24 Financial, Inc.

25 Do you see that?

1 M. Carpenter

2 A. Yes.

3 Q. Is this a document that you reviewed
4 with counsel that refreshed your recollection?

5 A. I don't remember.

6 Q. Turning to the -- page 3 in the
7 document?

8 A. Yes. I mean, I reviewed several of
9 our SEC filings. I don't remember whether I
10 reviewed this one or not.

11 Q. Looking at Note 4 or No. 4 on
12 page 3.

13 A. Yes.

14 Q. It says, "Includes approximately
15 \$1.6 billion charge resulting from Ally's
16 comprehensive settlement agreement in the
17 ResCap Chapter 11 bankruptcy case."

18 A. Right.

19 Q. "This was partially offset by
20 approximately \$600 million in tax benefits
21 related to the settlement charge on the sale
22 of Ally's international business."

23 What's your understanding of what
24 the tax benefits related to the settlement
25 charge are?

Plaintiff's Objection
82:14-83:5
Lack of personal
knowledge (FRE
602), lack of
foundation (FRE
602, 901, 903),
inadmissible lay
opinion

1 M. Carpenter

2 A. I'm not a tax expert, and so, I'm
3 not going to go into the details of that tax
4 return. I can't do it sitting here. So I'm
5 really not familiar with the details.

6 Q. But you don't challenge that there
7 are tax benefits related to the settlement
8 charge?

9 MR. DONOVAN: Well, objection. I
10 think you're mixing terms here. So if he
11 doesn't have a foundation, he's not the
12 right witness for it.

13 A. I mean, it says here -- I can read
14 what it says. That's all I know.

15 Q. And did you read --

16 A. You just separated out, by the way,
17 settlement charges from sale of Ally's
18 businesses.

19 MR. DONOVAN: And I think you're
20 also -- it shows a net loss that it's a
21 footnote to. So I'm not sure what the
22 benefit is to lose 1 or \$2 billion there,
23 so...

24 MS. MILLER: Well, it's a billion
25 dollars; right?

1 M. Carpenter

2 MR. DONOVAN: It's a loss.

3 MS. MILLER: Right. If you lose 2
4 and you only lose 1, that's a benefit of 1
5 because of the losses being offset -- we
6 don't have to discuss tax issues right
7 now.

8 MR. DONOVAN: I think the witness
9 issue here is you have a foundational
10 problem.

11 MS. MILLER: Okay. I'm going to ask
12 you a question.

13 BY MS. MILLER:

14 Q. Mr. Carpenter, in your capacity as
15 CEO of Ally, did you review Ally's public
16 filings?

17 A. Yes.

18 Q. Did you review this 8K?

19 A. Yes.

20 Q. And if you -- would you confirm with
21 all of the people who report to you and who
22 are responsible for the various sections that
23 the information that they've included is
24 complete and accurate?

25 A. Yes.

1 M. Carpenter

2 Q. And you wouldn't sign off on an Ally
3 public filing without doing that; right?

4 A. Correct.

5 Q. And so, to the best of your
6 understanding, every statement in this public
7 filing is true and complete; right?

8 A. Right.

9 Q. And -- so in connection with
10 settlement negotiations, you never
11 asked any -- sorry.

12 Did you have any discussions with
13 any members of your staff about the net tax
14 impact that ResCap restructuring and a
15 settlement payment to ResCap would have for
16 Ally?

17 A. None whatsoever.

18 Q. And after the examiner report came
19 out, did you have any discussions with your
20 tax advisors about the tax benefits identified
21 by the examiner?

22 MR. DONOVAN: And, again, to the
23 extent it's legal advice, you can't
24 disclose that, Mr. Carpenter. But if it's
25 business, you can. I just don't want you

1 M. Carpenter

2 to --

3 A. I mean, I had conversations with our
4 financial people who basically explained to me
5 why they thought there was absolutely no merit
6 in that suggestion.

7 Q. Did you have an understanding that
8 Ally will receive essentially a 35 percent
9 increase -- 35 cents on the dollar increase in
10 tax benefits for any additional dollar it
11 contributes in settlement to --

JSN Objection
86:7-87:7
Inadmissible
hearsay (FRE
802)

12 A. I think I just said to you that my
13 tax people basically explained to me that
14 there was not a tax benefit as a result of the
15 settlement. I just explained that.

16 Q. What did your tax people tell you,
17 other than that there wasn't a benefit about
18 the tax effect of the settlement?

19 A. I don't remember the details. It's
20 a long time ago.

21 Q. When did you have those discussions?

22 A. After the examiner's report came
23 out. The first time I talked to them about
24 taxes was when that report came out. And
25 their response to me was it doesn't make any

1 M. Carpenter

2 sense.

3 Q. And did you have any subsequent
4 discussions with them?

5 A. I didn't need to. They told me it
6 didn't make any sense. That's all I needed to
7 know.

8 Q. Who were your tax people who you
9 spoke to after the examiner report came out?

10 A. Well, I talked to our chief
11 financial officer. And he, in turn, spoke
12 with Jim Aretakis and other folks in our Tax
13 Department.

14 Q. And did you ever speak directly to
15 Mr. Aretakis?

16 A. No.

17 MS. MILLER: I have no further
18 questions. Thank you. Thank you very
19 much.

20 MR. DONOVAN: Thank you very much.
21 Off the record.

22 THE VIDEOGRAPHER: The time is

23 //

24 //

25 CONTINUED ON THE NEXT PAGE TO INCLUDE JURAT.

1 M. Carpenter

2 4:19 p.m. We're going off the record.

9

3 (The deposition was concluded at
4 4:19 p.m.)

5 (The exhibits were retained by the
6 court reporter to be attached to the
7 transcript.)

8
9
10
11
12
13
14 _____
15 MICHAEL CARPENTER

16
17 Subscribed and sworn to before me
18 this day of 2013.

1 M. Carpenter

2
3 C E R T I F I C A T E
4

5 STATE OF NEW YORK)

6) ss.:

7 COUNTY OF NEW YORK)
8

9 I, THOMAS A. FERNICOLA, Registered
10 Reporter and Notary Public within and for
11 the State of New York, do hereby certify
12 that the within is a true and accurate
13 transcript of the proceedings held on
14 November 12, 2013.

15 That I am not related to any of the
16 parties to this action by blood or
17 marriage; and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 12th day of November,
21 2013.
22

23 _____
24 THOMAS A. FERNICOLA, RPR
25

1 M. Carpenter

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3 ATTORNEY PAGE

4 Ms. Miller 7

M. Carpenter

----- EXHIBITS -----

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Exhibit 1 - Transcript of Conference	29	18
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Call dated November 2, 2011, Bates

Nos. Ally_0255144 through 162,

Exhibit 2 - Set of Board Material of	51	12
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GMAC Financial Service, dated June

1, 2009, Bates Nos. Ally_0003585

through 3759,

Exhibit 3 - E-Mail from Lara Hall to	63	22
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Michael Carpenter dated September

26, 2011, Bates No. Ally_0359385,

Exhibit 4 - Series of E-Mails, Bates	72	3
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1 M. Carpenter

2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name: In Re: Residential Capital, LLC

4 Dep. Date: November 12, 2013

5 Deponent: MICHAEL CARPENTER

6 Reason codes:

7 1. To clarify the record.

2. To conform to the facts.

8 3. To correct transcription errors.

9 Page ____ Line ____ Reason ____

10 From ____ to ____

11 Page ____ Line ____ Reason ____

12 From ____ to ____

13 Page ____ Line ____ Reason ____

14 From ____ to ____

15 Page ____ Line ____ Reason ____

16 From ____ to ____

17 Page ____ Line ____ Reason ____

18 From ____ to ____

19
20 _____
21 MICHAEL CARPENTER

22
23 Subscribed and sworn to before me

24 this day of 2013.